

1 CENTER FOR DISABILITY ACCESS  
2 Ray Ballister, Jr., Esq., SBN 111282  
3 Mark Potter, Esq., SBN 166317  
4 Phyl Grace, Esq., SBN 171771  
5 Dennis Price, SBN 279082  
6 Mail: PO Box 262490  
7 San Diego, CA 92196-2490  
8 Delivery: 9845 Erma Road, Suite 300  
9 San Diego, CA 92131  
10 (858) 375-7385; (888) 422-5191 fax  
11 phylg@potterhandy.com

12 Attorneys for Plaintiffs

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Jose Martinez,**

Plaintiff,

v.

**Vahe Ashkarian;**  
**Christine Ashkarian;**  
**Manas Boujikian;**  
**Donalee Boujikian;**  
**J. I. Investments, Inc.**, a California  
Corporation; and Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Jose Martinez complains of Defendants Vahe Ashkarian; Christine Ashkarian; Manas Boujikian; Donalee Boujikian; J. I. Investments, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic. He uses a wheelchair for mobility. He drives a van with a ramp

1 that deploys out of the passenger side.

2 2. Defendants are, or were at the time of the incidents, the real property  
3 owners, business operators, lessors and/or lessees for Integrated Medical  
4 Services located at or about 22114 S. Vermont Avenue, Torrance, California.

5 3. Plaintiff does not know the true names of Defendants, their business  
6 capacities, their ownership connection to the property and business, or their  
7 relative responsibilities in causing the access violations herein complained of,  
8 and alleges a joint venture and common enterprise by all such Defendants.  
9 Plaintiff is informed and believes that each of the Defendants herein,  
10 including Does 1 through 10, inclusive, is responsible in some capacity for  
11 the events herein alleged, or is a necessary party for obtaining appropriate  
12 relief. Plaintiff will seek leave to amend when the true names, capacities,  
13 connections, and responsibilities of the Defendants and Does 1 through 10,  
14 inclusive, are ascertained.

15

16 **JURISDICTION & VENUE:**

17 4. This Court has subject matter jurisdiction over this action pursuant to  
18 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
19 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 5. Pursuant to pendant jurisdiction, an attendant and related cause of  
21 action, arising from the same nucleus of operative facts and arising out of the  
22 same transactions, is also brought under California's Unruh Civil Rights Act,  
23 and the California Disabled Persons Act, which acts expressly incorporate the  
24 Americans with Disabilities Act.

25 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
26 founded on the fact that the real property which is the subject of this action is  
27 located in this district and that Plaintiff's cause of action arose in this district.

## **FACTUAL ALLEGATIONS:**

7. The Plaintiff went to Integrated Medical Services twice in October of 2014 to shop.

8. Integrated Medical Services is a facility open to the public, a place of public accommodation, and a business establishment.

9. Parking spaces are one of the facilities, privileges and advantages offered by defendants to customers of Integrated Medical Services.

10. Unfortunately, although parking spaces are one of the facilities available to customers who patronize Integrated Medical Services, there is not a single compliant parking space reserved for persons with disabilities.

11. However, on information and belief, plaintiff alleges that a fully compliant, accessible parking space once existed at this location but the parking space has been allowed to fade away to the point that it is no longer available for use by persons with disabilities. In fact, defendants look to have painted both of the International Symbols of Accessibility yellow. Some of the yellow paint is peeling, though, so some of the blue paint is beginning to reappear. Plaintiff believes that a parking reserved for persons with disabilities used to exist. Defendants simply do not maintain their parking lot so that it is accessible for persons with disabilities.

12. Defendants have no policy or procedure in place to make sure that the accessible parking spaces remain useable in the parking lot. As such, the parking space reserved for persons with disabilities is no longer available.

13. The plaintiff personally encountered this problem. This inaccessible condition denied the plaintiff full and equal access and caused him difficulty and frustration.

14. Plaintiff would like to return and patronize Integrated Medical Services but will be deterred from visiting until the defendants cure the violation. Plaintiff lives about ten minutes from Integrated Medical Services. Integrated

1 Medical Services is conveniently located. Plaintiff would like to return.

2 15. The defendants have failed to maintain in working and useable  
3 conditions those features required to provide ready access to persons with  
4 disabilities.

5 16. Given the obvious and blatant violations, the plaintiff alleges, on  
6 information and belief, that there are other violations and barriers on the site  
7 that relate to his disability. Plaintiff will amend the complaint, to provide  
8 proper notice regarding the scope of this lawsuit, once he conducts a site  
9 inspection. However, please be on notice that the plaintiff seeks to have all  
10 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
11 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
12 he can sue to have all barriers that relate to his disability removed regardless  
13 of whether he personally encountered them).

14 17. Additionally, on information and belief, the plaintiff alleges that the  
15 failure to remove these barriers was intentional because: (1) these particular  
16 barriers are intuitive and obvious; (2) the defendants exercised control and  
17 dominion over the conditions at this location and, therefore, the lack of  
18 accessible facilities was not an “accident” because had the defendants  
19 intended any other configuration, they had the means and ability to make the  
20 change.

21

22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
23 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all  
24 defendants (42 U.S.C. section 12101, et seq.)

25 18. Plaintiff repleads and incorporates by reference, as if fully set forth  
26 again herein, the allegations contained in all prior paragraphs of this  
27 complaint.

28 19. Under the ADA, it is an act of discrimination to fail to ensure that the

1       privileges, advantages, accommodations, facilities, goods and services of any  
2       place of public accommodation is offered on a full and equal basis by anyone  
3       who owns, leases, or operates a place of public accommodation. See 42  
4       U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 5       a. A failure to make reasonable modifications in policies, practices,  
6           or procedures, when such modifications are necessary to afford  
7           goods, services, facilities, privileges, advantages, or  
8           accommodations to individuals with disabilities, unless the  
9           accommodation would work a fundamental alteration of those  
10          services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11       b. A failure to remove architectural barriers where such removal is  
12           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
13           defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
14           Appendix "D."
- 15       c. A failure to make alterations in such a manner that, to the  
16           maximum extent feasible, the altered portions of the facility are  
17           readily accessible to and usable by individuals with disabilities,  
18           including individuals who use wheelchairs or to ensure that, to  
19           the maximum extent feasible, the path of travel to the altered  
20          area and the bathrooms, telephones, and drinking fountains  
21           serving the altered area, are readily accessible to and usable by  
22           individuals with disabilities. 42 U.S.C. § 12183(a)(2).

23       20. Any business that provides parking spaces must provide handicap  
24       parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in  
25       every eight of those handicap parking spaces but not less than one must be a  
26       "van" accessible parking space, *i.e.*, having an eight foot access aisle. 1991  
27       Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six  
28       accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

1       21. Here, the lack of an accessible, compliant parking space is a violation of  
2 the law.

3       22. A public accommodation must maintain in operable working condition  
4 those features of its facilities and equipment that are required to be readily  
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6       23. Here, the failure to ensure that the accessible facilities were available  
7 and ready to be used by the plaintiff is a violation of the law.

8       24. Given its location and options, Integrated Medical Services is a  
9 business that the plaintiff will continue to desire to patronize but he has been  
10 and will continue to be discriminated against due to the lack of accessible  
11 facilities and, therefore, seeks injunctive relief to remove the barriers.

12

**13       II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
14       RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ §  
15       51-53)**

16       25. Plaintiff repleads and incorporates by reference, as if fully set forth  
17 again herein, the allegations contained in all prior paragraphs of this  
18 complaint.

19       26. Because the defendants violated the plaintiffs' rights under the ADA,  
20 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.  
21 Code § 51(f), 52(a).)

22       27. Because the violation of the Unruh Civil Rights Act resulted in  
23 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
24 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
25 55.56(a)-(c).)

1                   **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**  
2                   **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all  
3 defendants) (Cal Civ.§ 54-54.8)

4                   28. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7                   29. Because the defendants violated the plaintiff's rights under the ADA,  
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
9 Code § 54.1(d), 54.3(a).)

10                  30. Because the violation of the Disabled Persons Act resulted in difficulty,  
11 discomfort or embarrassment for the plaintiffs, the defendants are also each  
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
13 (c).)

14

15                  **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff  
16 and against all defendants)

17                  31. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint.

20                  32. The Defendants had a general duty and a duty arising under the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act and  
22 California Disabled Persons Act to provide safe, convenient, and accessible  
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding  
24 paragraphs, has caused injury and damage as alleged above.

1                   **PRAYER:**

2                   Wherefore, Plaintiff prays that this court award damages and provide  
3                   relief as follows:

4                   1. For injunctive relief, compelling defendants to comply with the  
5                   Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6                   Plaintiffs are not invoking section 55 of the California Civil Code and is not  
7                   seeking injunctive relief under the Disabled Persons Act at all.

8                   2. Damages under the Unruh Civil Rights Act and/or the California  
9                   Disabled Persons Act which damages provide for actual damages and a  
10                   statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
11                   acts, simultaneously, and an election will be made prior to or at trial.

12                   3. Reasonable attorney fees, litigation expenses and costs of suit,  
13                   pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14                   Dated: January 12, 2015

15                   CENTER FOR DISABILITY ACCESS

16                     
17                   By: \_\_\_\_\_  
18                   Mark Potter, Esq.  
19                   Attorneys for Plaintiff